

Service Date: May 22, 1996

**DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA**

* * * * *

IN THE MATTER of Robert and Jamie)	TRANSPORTATION DIVISION
Lindburg, Bigfork, Montana, Application)	DOCKET NO. T-
95.76.PCN		
for a Montana Intrastate Certificate of)	
Public Convenience and Necessity.)	ORDER NO. 6404a

FINAL ORDER

APPEARANCES

FOR THE APPLICANT:

Randall A. Snyder, Esq., Snyder & Noble, PC, 8090 Highway 35, P.O. Box 717,
Bigfork, Montana 59911

FOR THE PROTESTANTS:

Eric F. Kaplan, Esq., Kaplan Law Offices, 512 1st Avenue West, P.O. Box 329,
Columbia Falls, Montana, 59912, representing Flathead Area Custom
Transportation, Inc., dba Kalispell Taxi and Shuttle Service

Randall Eugene Johnson, dba Flathead Glacier Transportation Co., P.O. Box 1707,
Whitefish, Montana 59937, appearing Pro Se

FOR THE COMMISSION:

Denise Peterson, Staff Attorney, and Bonnie Lorang, Assistant Administrator,
Transportation Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana
59620-2601

BEFORE:

BOB ROWE, Vice Chairman and Hearing Examiner

Pursuant to 2-4-621, MCA, a proposed order authorizing a grant of the authority requested was issued in this matter on April 23, 1996. No exceptions, briefs or requests for oral argument have been received. Therefore, the Commission adopts the proposed order as its final order in this matter.

BACKGROUND

1. On November 7, 1995, Robert and Jamie Lindburg (Applicants), Bigfork, Montana, filed an application with the Montana Public Service Commission (Commission) for a Class B certificate of public convenience and necessity to transport passengers within the town of Bigfork and a five mile radius.

2. The Commission received protests from Valet Limousine, Inc., Missoula, Montana (PSC No. 7172), Flathead Area Custom Transportation, Inc., dba Kalispell Taxi Service and Airport Shuttle Service (PSC No. 56) (Kalispell Taxi), and Randy Johnson, dba Flathead-Glacier Transportation Company (PSC No 9015).

3. The Commission noticed the hearing for February 13, 1996 in Bigfork on the application as initially requested. On January 18, 1996 counsel for Applicants filed a request to amend the certificate and to continue the hearing for renoticing the application. The requested authority as amended follows:

- CLASS B - Passengers within the town of Bigfork, Montana;**
- Passengers within a five (5) mile radius within the town of Bigfork, Montana;
 - Passengers from Bigfork to Glacier International Airport and passengers from Glacier International Airport to Bigfork (or to destinations within a five (5) mile radius of Bigfork);
 - Passengers from Bigfork to Kalispell.

4. The Commission published notice of the amended application, scheduling a public hearing for March 27, 1996 in Bigfork. On March 19, 1996 Valet Limousine withdrew its protest on receiving confirmation from Applicants that they would not request or apply for authority to provide limousine service.

5. The Commission rescheduled the public hearing as a result of a severe winter storm. Hearing Examiner Bob Rowe, Commissioner for District 5, conducted the hearing at the Marina Cay Resort, 180 Vista Lane, Bigfork, Montana beginning at 8:30 a.m. on April 5, 1996.

SUMMARY OF TESTIMONY

Applicants' Witnesses

6. Jamie Lindburg, Applicant, testified on her past business experience. She and her husband owned Bigfork PhotoPlus for six years, which they sold and bought a delivery service. Since December, 1995, they have had a business delivering products, parcels and documents and doing grocery-shopping and errand-running. The growth rate of this business has been slow, but steady. The business earns approximately \$300 in monthly revenues.

7. Ms. Lindburg testified that she has kept the following record of requests received for taxi service since starting the delivery service: (a) 1/9/96, 3 taxi requests to the airport; (b) 1/18/96, 1 taxi request in Bigfork; (c) 1/26/96, 1 call to the airport; (d) 2/16/96, 1 call to the airport; (e) 3/15/96, 1 call to the doctor in Kalispell; (f) 3/21/96, 1 call from an elderly man who said he would use the service a lot (objected to as hearsay, but allowed in as a statement of support, only); (g) 3/26/96, 1 request from Marina Cay for taxi from airport to Marina Cay; (h) 3/29/96, 1 request for airport to home in Bigfork; and (i) several other undocumented calls.

8. Ms. Lindburg testified on and sponsored Applicants' Exhibit 1 which contained four pages: (1) proposed taxi rates; (2) anticipated cost comparisons with Kalispell Taxi; (3) estimated business projection; and (4) estimated monthly expenses and net income for the first year. She testified that page 1 outlined rates they proposed to charge, including a mixture of flat and metered rates, with an extra charge for waits up to one hour (\$3 per five minutes). She had reviewed Kalispell Taxi's rates on tariff for a cost comparison on page 2, she said. The last two pages contained estimates of gross income, monthly expenses and net income. For their proposed taxi service within the five-mile

radius, she projected annual gross revenues of \$15,120; for proposed service from Bigfork to Kalispell she projected \$5,184; and for service between the airport and Bigfork, she predicted gross revenues of \$8,820, with \$480 for additional people on airport runs. On the wait time, she anticipated annual revenues of \$300. With her monthly expenses, including the amortized payments on a 1993-1995 Jeep Cherokee they proposed to buy for the taxi business, she projected their monthly net income at \$1,302 for the proposed taxi service.

9. Under cross-examination, Ms. Lindburg testified that her husband would be the primary driver, but she would drive as well. They would operate even if business were slow. In their delivery business they do not close even when there are no calls for several weeks. For communication, they intend to use cellular phones (they have three already). She testified that their assets include equity in their house, a 1993 Nissan Altima, checking and savings, and \$10,000 worth of camera equipment. She agreed that she might have to dip into their assets the first month. The projected net income on the exhibit did not include taxes, she admitted. They had not discussed the salary with an accountant. They might incorporate. On redirect examination, she said that they have income from other sources and will not have to liquidate their assets to keep the business going. She did not anticipate much monthly repair and maintenance the first year. ("Not much can go wrong in the first year [with a fairly new vehicle].")

10. Questioned on advertising, Ms. Lindburg stated that they had not advertised taxi service "locally" (newspapers, magazines) when they received the requests for taxi service in January and February, in conjunction with their advertising of their delivery service. She admitted that the Yellow Pages (advertising) of the telephone book that was distributed in late March contained a listing for Bigfork Taxi and Delivery Service. She said that they had put the listing in with taxi service in case they got the authority.

11. Ms. Lindburg testified that they would not use the Nissan Altima in their operation. They intend to purchase a Jeep Grand Cherokee, but she was not sure how much it would cost. She was unfamiliar with the term "ADA" (Americans with Disabilities Act) and admitted that their taxi would not be handicapped accessible.

12. Robert Lindburg, spouse and co-applicant, testified that he had owned a small business in Virginia with ten employees. He has invented several products which look promising. He worked in their photography store as a photographer, until they sold the business and started the delivery business. He graduated from Bigfork High School, so he is familiar with the area, including the back roads. He will be the primary driver. He anticipates that the response time to a call will be about ten minutes, with five minutes time to deliver in a five mile radius. He believes that response and delivery time will be important.

13. Mr. Lindburg testified that he has found available for purchase a \$26,000 mint condition Cherokee with 8,000-10,000 miles, which he has the ability to buy. For equipment, he needs a sign and that is all. He would have to look into serving the handicapped, but would be happy to try. He has also received calls (not documented) requesting service. He has gone over the estimated income and expenses and believes that the figures are reasonable, possibly conservative, based on his visits with motels and businesses. He thinks that there is unmet demand in Bigfork and that their proposed service would be an improvement over existing service because the community knows the applicants, likes doing business and feels comfortable with local providers. People now are relying on family and friends, he said. Further, with the four-wheel drive, they can serve areas not as accessible with two-wheel drive, particularly when icy. For a back-up vehicle they could use the Altima, but expenses for the Altima primarily are attributed to the delivery business, he said.

14. Kathy Korb, mother of Applicant Jamie Lindburg, testified that she has had a need for transportation. Nine years before when her husband worked in Kalispell, she was left in Ferndale without transportation. Two months ago, her husband was disabled and wanted to go to work. Kalispell Taxi would have cost over \$20, so they didn't use that service. They could not rely on or use Kalispell Taxi on a regular basis. She knows of other one-car families and older people with no cars who cannot afford Kalispell Taxi.

15. Luke Martin testified in support of the application. He works at Bill's Conoco and Marina Cay in Bigfork. He needs a taxi on Friday nights (when at times he cannot legally drive) or to get to work if the car breaks down. Using Kalispell Taxi, it would take ½ to one hour to get to Bigfork and would cost more than what Applicants propose. Needs are not being met, he said; he knows of others similarly situated. On cross-examination, he testified that he waited 45 minutes for Kalispell Taxi two years ago in the summer. (He called from his house in Bigfork to go to Kalispell.)

16. Jody Hertenstein, hotel director at Marina Cay, testified in support of the application. She is familiar with the hotel needs and transportation needs throughout the Bigfork area. Many guests do not have transportation. They need to go to Eagle Bend, to restaurants, and to and from the airport. Now they can call Kalispell Taxi or airport limousine for airport service, and she has used those services. At Marina Cay, they could use a local service because of timeliness and ability to respond to last-minute requests to the airport. However, few airport trips are spur-of-the-moment, while local transportation is a particular problem for timeliness and cost. For example, Eagle Bend is only 1.5 miles away and they must scramble and find transportation there. There is unmet demand. She testified that she was principally testifying in support of service as it relates to Bigfork. Kalispell Taxi's service has been satisfactory to and from the airport.

Protestants' Witnesses

17. James E. Michael, Kalispell, Montana, testified in opposition to the application. He owns PSC Certificate No. 56, purchased in 1980 and leased to Flathead Area Transportation Service, doing business as Kalispell Taxi and Airport Shuttle Service (Kalispell Taxi). He is the general manager handling the day to day business. Kalispell Taxi has provided continuous service for 16 years. The corporation owns 18 vehicles, using 8 on a daily basis with the others as back up. The fleet consists of nine wide one-transit buses (modified for handicapped access with raised roof), one fifteen passenger van, eight 1988-89 Plymouth Grand Furies, a 1992 Caravan modified for accessibility. Kalispell Taxi has two bases of operation: the facilities on North Meridian Road in Kalispell with a 30 by

90 foot shop and offices and also offices at 494 N. Somers Road, where Mr. Michael lives and works. Kalispell Taxi has 11 to 12 full time employees.

18. Under Mr. Michael's PSC Certificate No. 56, Kalispell Taxi has provided service to Bigfork and five miles when requested and is willing and able to do so. He estimated that Kalispell Taxi provides about 20 trips per year in the Bigfork and five miles area over the last five years, and he does not anticipate a significant increase. He has never denied anyone service, he stated, and the average response time with light traffic is 10 minutes, 15 minutes with heavy traffic. Between Bigfork and the Glacier International Airport, Mr. Michael testified that Kalispell Taxi regularly provides service averaging three trips per week off-season and ten per week in the summer (about 240 trips per year) and is willing and able to continue to do so. He keeps a shuttle stationed at the airport to meet all inbound flights. For trips to the airport, most people make prior reservations. If they do not, the normal response time is 15 minutes. He said that he had one complaint on airport service in 16 years. The taxi driver encountered icy winter roads and an accident which slowed him down. The passenger went to the airport in his own vehicle. The same driver picked up other passengers on that trip and got them to the airport on time, Mr. Michael added.

19. Mr. Michael testified that a grant of this authority as requested would harm his business. Kalispell Taxi has considerable investment and has made a commitment through its tariff to provide vehicles at the airport. Between Bigfork (and five miles) and the airport, Kalispell Taxi makes 240 trips per year, for about \$8,200 in annual revenues. Between Bigfork (and five miles) and Kalispell, Kalispell Taxi makes 600 or more one-way trips per year, for approximately \$9,500 in annual revenues. He calculated that granting this authority would reduce profitability and raise operating expenses, reducing gross revenue by 9 to 10 percent, for a net revenue loss (considering reduced fuel, oil, tires and repair expenses) projected at \$14,000 per year. This loss would adversely affect the ability of the business to replace equipment and upgrade, and could affect response time, he stated. He also indicated that duplication of authorities hurts service in general, based on

his past experience. Competing carriers do not receive adequate business, and therefore neither can maintain equipment and employees at a desirable level. At times, he and a competing carrier have both been called, so that the customer can have a back up, which is a waste of time, money and resources.

20. Mr. Michael stated that he would consent to (not protest) a limited grant of the authority for Bigfork and a five-mile radius. He has previously made similar agreements. He is concerned to keep the business essential to the survival of Kalispell Taxi, that is, Kalispell and the airport business. He stated that there is not an unmet need in the Bigfork area, based on the requests he gets, but it is possible that Applicants can create a business within the local area from potential customers not calling Kalispell Taxi.

21. Randall Johnson, doing business as Flathead Glacier Transportation Co., testified in opposition to the application. He meets three to five Delta flights and two to three Horizon flights daily, and a Northwestern flight twice a week. There are about two trips to the airport per day in off-season where there are no passengers on the flights, resulting in about 400 trips without fares. He also has an operating agreement with the airport. He believed that any revenue loss would affect his business, but he had not calculated the loss. Mr. Johnson admitted that he has often applied to the Commission for suspension of his operating authority for the months of April to May and September to October, because of lack of work and Kalispell Taxi's eight vehicles in the area. Mr. Johnson said that he is not interested in the Bigfork area itself; he had only one call in four years from Bigfork which he turned over to Kalispell Taxi. He has four vehicles. The airport is his concern; he would miss the airport/Bigfork trips financially. He meets flights and last year did 90 to 100 airport to Bigfork trips, in groups of 3 to 12. The early morning flights from the airport to Bigfork are prearranged. He is already in direct competition with Kalispell Taxi for that service.

FURTHER FINDINGS AND DISCUSSION

22. Pursuant to Title 69, Chapter 12, Montana Code Annotated (MCA), the Commission supervises and regulates intrastate motor carrier service. § 69-12-201, MCA. The maintenance of an adequate common carrier motor transportation system has been declared a public purpose. § 69-12-202, MCA. To obtain motor carrier operating authority, a motor carrier must file an application with the Commission, which will give notice of the filing and schedule a hearing upon filing of a protest or a request for a hearing. § 69-12-321, MCA.

23. Section 69-12-323, MCA, sets out the requirements for a Commission decision on an application for a certificate and the evidence presented at hearing. The Commission shall find and determine from the evidence whether public convenience and necessity require authorizing the proposed service. The Commission will consider existing transportation service; the likelihood of the proposed service being permanent and continuous 12 months of the year; and the effect of the proposed service on other essential transportation service in the affected communities.

24. The Commission has interpreted § 69-12-323, MCA, as requiring it to address these issues before granting an application for authority:

- a. Is the applicant fit and able to perform the proposed service?
- b. Does the public convenience and necessity require the authorization of the proposed service?
- c. Can and will existing carriers meet the public need for the proposed service?
- d. Would the proposed service have an adverse impact on existing transportation?

Fitness

25. The Commission makes a threshold determination of whether the applicant is fit, willing and able to provide the service, considering these factors: (1) the financial condition of the applicant; (2) the intention of the applicant to perform the service sought; (3) the adequacy of the equipment the applicant has to perform the service; (4) the

experience of the applicant in conducting the service sought; and (5) the nature of previous operations, if there are allegations of illegal operations.

26. Applicants have demonstrated the financial wherewithal to begin and continue a basic taxi service business. They have sufficient assets to support a business. They have already established a modestly successful delivery service business in the Bigfork area, beginning only in December, 1995. Previously, according to their testimony, they have had success with other enterprises. They intend to perform the service 12 months of the year. Living in the Bigfork area, they intend to be responsive to the needs of the local community. The Commission finds that Applicants meet the threshold requirement of fitness to provide the service for which they have applied.

Public Convenience and Necessity

27. In determining public convenience and necessity, the Commission has traditionally followed the analysis of Pan-American Bus Lines Operation, 1 M.C.C. 190 (1936).

The question in substance is whether the new operation or service will serve a useful public purpose, responsive to a public demand or need; whether this purpose can and will be served as well by existing lines of carriers; and whether it can be served by applicant with the new operation or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest. 1 M.C.C. 203.

28. Public need must be shown by shipper testimony. In a request for authority to transport passengers by taxi in an area with carriers with existing authority, the record must demonstrate a need for additional taxi service in the area. The evidence and testimony established a limited need for local taxi service in the area of the initial application, i.e., Bigfork and a five-mile radius. The hotel director at Marina Cay testified that guests need affordable, timely local taxi service to places such as Eagle Bend and restaurants. While they also need taxi service to and from the airport, this service is already satisfactorily provided. She had no complaints about the existing service to and

from the airport. Seldom is there a need for spur of the moment taxi service to the airport.

The airport service is not the problem; local service is the problem, with the issues of timeliness and cost. She believed that the community would use a taxi service to a greater extent if it is located in the community, with timeliness and cost-saving benefits.

29. Applicant's other supporting witnesses included Ms. Lindburg's mother and another member of the community. These witnesses demonstrated community support and need for a local taxi service, to a limited extent. They did not support a need for service to the airport, a need which the hotels can address more explicitly, or a need for service from Bigfork to Kalispell. Meanwhile, the representative of the hotel testified that airport service is adequate, that there is no real need for additional airport service, and that she principally appeared to support local taxi service for Bigfork. Protestant Randall Johnson had only one call for Bigfork in four years, often obtains suspensions of authority so that he does not have to provide service, and seems not to have an interest in local service to Bigfork. Protestant Kalispell Taxi's witness has conceded that he does not oppose a limited grant of authority to provide service to Bigfork and a five-mile radius. The Applicants offered no witnesses to support public need beyond local Bigfork traffic. The Commission finds that there is a need for local taxi service and that it should grant the application for local taxi service to Bigfork and a five-mile radius. The Commission finds that there has been no demonstration of public need for service beyond the five-mile radius.

Harm to existing carriers

30. The Commission finds that if the application were granted beyond Bigfork and the five-mile radius, Protestants would suffer harm, particularly in losing the airport traffic. Protestants have made investments in time and equipment to be available at the airport and cannot afford to lose that business. Protestants testified that they were able to meet all the airport needs in the area, and any additional airport need. The hotel director of Marina Cay affirmed that the airport taxi service is satisfactory. Kalispell Taxi could not afford to lose its Kalispell business, either. From the testimony of both Protestants, the

Commission finds that a grant of authority to provide taxi service to the Bigfork and five-mile radius would not have a serious adverse effect on the existing carriers.

CONCLUSIONS OF LAW

1. The Montana Public Service Commission properly exercises jurisdiction over the parties and matters in this proceeding pursuant to Title 69, Chapter 12, Montana Code Annotated.

2. The Commission has provided adequate notice and opportunity to be heard to all interested parties in this matter pursuant to the Montana Administrative Procedures Act (MAPA) requirements for contested case procedures. §§ 2-4-601, et seq., MCA.

3. An applicant for a certificate of Class B operating authority must show that the public convenience and necessity require the proposed service. § 69-12-323, MCA.

4. Applicant has only demonstrated a public demand or need for a partial grant of the proposed service, that is to serve Bigfork and a five-mile radius. Existing carriers are providing satisfactory service between the airport and Bigfork and within the Kalispell/Bigfork area.

5. Granting this application in its entirety would adversely affect Protestants, particularly the airport traffic to and from Bigfork and the traffic from Bigfork and five mile radius to the City of Kalispell.

ORDER

NOW THEREFORE IT IS ORDERED that the application of Robert and Jamie Lindburg, Bigfork, Montana for a Class B Certificate of Public Convenience and Necessity is granted in part as follows:

Class B - Passengers within the town of Bigfork, Montana and a five (5) mile radius thereof. Limitation: Transportation of passengers in limousines is prohibited.

The Commission denies the remainder of the application to provide taxi service as follows:

- (a) between points located within Bigfork, Montana and a five (5) mile radius thereof on the one hand and Glacier International Airport on the other hand; and**
 - (b) from Bigfork, Montana and a five (5) mile radius thereof to Kalispell, Montana.**
- Done and Dated this 20th day of May, 1996 by a vote of 5-0.**

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

NANCY MCCAFFREE, Chair

DAVE FISHER, Vice Chair

BOB ANDERSON, Commissioner

DANNY OBERG, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision.
 A motion to reconsider must be filed within ten (10) days. See ARM
 38.2.4806.